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SUPREME COURT, U.S.

NO. 81-6978

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

JOHN ELDON SMITH,

Petitioner,

v.

CHARLES BALKCOM,
WARDEN, GEORGIA
STATE PRISON,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1.

Whether the United States Court of Appeals for the Fifth Circuit properly determined, under the circumstances of this case, that the exclusion for cause of veniremen who were unequivocally opposed to the death penalty did not violate Petitioner's constitutional right to an impartial jury?

2.

Whether the United States Court of Appeals for the Fifth Circuit properly rejected Petitioner's claims of arbitrariness and capriciousness in the operation of the Georgia death penalty statute on the basis of the generalized allegations offered in support of this claim of discrimination?

3.

Whether the United States Court of Appeals for the Fifth Circuit properly found that Petitioner had failed to show that the Supreme Court of Georgia failed to properly perform its statutorily mandated sentence review in this case?

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PART ONE

STATEMENT OF THE CASE

Petitioner, John Eldon Smith a/k/a Anthony Isalldo Machetti, was convicted of two counts of murder in the Superior Court of Bibb County on January 27-30, 1975. Having found the Petitioner guilty of these murders, the jury found the presence of the statutory aggravating circumstance contained in Ga. Code Ann. § 27-2534.1(b)(4), i.e., that these murders had been committed for the purpose of receiving money or other thing of monetary value. Having made this finding, a sentence of death was imposed on both counts of murder.

Briefly stated, Petitioner's wife, Rebecca Akins Smith Machetti, the Petitioner and a friend, John Maree, plotted the murder of Petitioner's wife's former husband, with the intent of redeeming the proceeds of the former husband's insurance policies whose beneficiaries were Mrs. Machetti and her three daughters. (Trial transcript, p. 402-403; 411-413; 815; 835). Petitioner was to share in the proceeds from the insurance policy with his wife and Mr. Maree was to profit by $1,000.00. (Trial transcript, p. 322-23; 325-26). There was also evidence that Petitioner was motivated by the possibility of enhancing his reputation as a "hit man" in the underworld, due to the murders. (Trial transcript, p. 326-27).

The murder of Joseph Ronald Akins and his new wife of twenty days, Juanita Knight Akins, occurred on August 31, 1974, as the result of gunshot wounds administered at close range. (Trial transcript, p. 200; 220-22; 334-39; 341-42; 502).

On direct appeal to the Supreme Court of Georgia, Petitioner's convictions and death sentences, as well as those of his wife, were upheld. See Smith v. State, 236 Ga. 12 (1976), cert. denied, 428 U.S. 910 (1976).

Next, the Appellant initiated state habeas corpus proceedings in the Superior Court of Tattnall County, Georgia. An evidentiary hearing was conducted on November 30, 1976. At this hearing, Petitioner was represented by three attorneys, and three witnesses, including Dr. Faye Goldberg and Mr. Hans Zeisel, testified in support of the allegations of the petition. Petitioner offered no testimony in his own behalf at the hearing.

On March 14, 1977, the state habeas corpus court denied relief to the Petitioner on all grounds raised in his petition. The Supreme Court of Georgia granted Petitioner's application for a certificate of probable cause to appeal from the denial of habeas corpus relief. The Supreme Court of Georgia affirmed the judgment of the state habeas corpus court in Smith v. Hopper, 240 Ga. 93 (1977).

Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 in the United States District Court for the Middle District of Georgia, Macon Division, on February 21, 1979. An order was signed by the district court allowing Petitioner to proceed in forma pauperis on February 21, 1979 and a stay of execution was filed on the same date. An answer was filed on behalf of the Respondent on April 4, 1979.

On October 5, 1979, Petitioner moved for an evidentiary hearing and presented certain documentary evidence in support of his motion. A response in opposition to Petitioner's motion for an evidentiary hearing was made by counsel for the Respondent on October 17, 1979, contending that the Petitioner had had an opportunity to present these contentions in an evidentiary hearing before the state habeas corpus court and that none of these contentions entitled Petitioner to habeas corpus relief, thereby necessitating no need for an evidentiary hearing.

On January 11, 1980, the district court entered an order stating that it had considered Petitioner's motion for an evidentiary hearing and determined that a hearing was not necessary as ". . . the merits can be decided upon the record containing transcripts, orders, affidavits, and briefs." However, the district court stated that pursuant to

Petitioner's request, it would consider the evidence and authorities offered in support of Petitioner's motion for an evidentiary hearing, in deciding the merits of the habeas corpus petition and also gave counsel for both sides an opportunity to file any additional evidence or briefs, within thirty days.

By order of the court dated April 21, 1980, Petitioner's federal habeas corpus petition was referred to the United States Magistrate for the submission of proposed findings of fact and recommendations for dispensation to the district judge. On September 9, 1980, the Magistrate filed proposed findings of fact and conclusions of law and recommended that the petition for writ of habeas corpus be denied. Petitioner filed objections to the Magistrate's proposed findings of fact and recommendation for disposition on October 20, 1980.

On November 26, 1980, the district court stating that it had carefully reviewed the Magistrate's report and recommendation, adopted this report and recommendation as the opinion and order of the court and denied Petitioner's habeas corpus petition. The writ of habeas corpus was denied and the petition dismissed on November 26, 1980.

The United States Court of Appeals for the Eleventh Circuit (former Fifth) affirmed the denial of federal habeas corpus relief in Smith v. Balkcom, 660 F.2d 573 (5th Cir. 1981). On March 29, 1982, the United States Court of Appeals for the Eleventh Circuit denied Petitioner's petitions for rehearing. A stay of execution was granted by this Court on May 18, 1982 pending the filing of this petition for a writ of certiorari. The present petition was filed on June 28, 1982, seeking the review of the judgment of the United States Court of Appeals for the Eleventh Circuit.

PART TWO

REASONS FOR NOT GRANTING THE WRIT

I. THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT PROPERLY REJECTED, UNDER THE CIRCUMSTANCES OF THIS CASE, PETITIONER'S CLAIMS THAT THE EXCLUSION FOR CAUSE OF TWO VENIREMEN WHO WERE UNEQUIVOCALLY OPPOSED TO THE DEATH PENALTY, DID NOT VIOLATE THIS PETITIONER'S CONSTITUTIONAL RIGHT TO AN IMPARTIAL JURY.

During the voir dire proceedings which took place at Petitioner's trial, two persons, Luysses G. Mathis and Arlin Henry Dowd, were excused for cause under the principles set forth by this Court in Witherspoon v. Illinois, 391 U.S. 510, 88 S.Ct. 1770 (1968), because of their unambigious expression of opposition to the imposition of the death penalty, without regard to the particular evidence to be presented in Petitioner's case.

Petitioner alleged in his application for federal habeas corpus relief under 28 U.S.C. § 2254, that the exclusion of these jurors by the procedure which Petitioner calls "death qualification", resulted in a jury that was "guilt-prone" allegedly destroying Petitioner's right to a neutral jury, his right to a representative jury and his right to a properly functioning jury.

In Witherspoon v. Illinois, supra, a similar claim concerning the "prosecution proneness" of death qualified jurors

was considered by this Court. At that time, in initially considering whether death qualified jurors were prosecution prone with reference to the determination of guilt, this Court characterized as "too tentative and fragmentary" the data presented in studies similar to those now before this Court which it is alleged established the prosecution proneness of such jurors.

This Court went on to note in Witherspoon v. Illinois, supra, that even if prosecution proneness of such jurors were to be established by these studies, it would still be necessary in order to determine if a defendant's constitutional rights had been violated, to determine ". . . whether the State's interest in submitting the penalty issue to a jury capable of imposing capital punishment may be vindicated at the expense of the defendant's interests in a completely fair determination of guilt or innocence -- given the possibility of accommodating both interests by means of a bifurcated trial, using one jury to decide guilt and another to fix punishment." Id. at 520, n. 18.

Having considered this Court's decision in Witherspoon v. Illinois, supra, the United States Court of Appeals for the Fifth Circuit (Unit B), noted that the Petitioner had attempted to take advantage of the opportunity left open by this Court in Witherspoon to show prosecution proneness by the addition of new data which would allegedly be more scientific to establish this proposition. Smith v. Balkcom, 660 F.2d 573, 578 (5th Cir. 1982).

Contrary to Petitioner's assertion, the United States Court of Appeals for the Fifth Circuit did not determine that Petitioner was not entitled to prove in a factual manner that death qualified juries are biased on the question of guilt.

Instead, the court noted that although the district court had denied Petitioner's motion for an evidentiary hearing, the district court specifically stated that in considering the allegations now raised before this Court, that it would consider the evidence and authorities offered in support of Petitioner's motion for an evidentiary hearing in deciding these cases on the merits and further, would give counsel an opportunity to file additional evidence or briefs concerning these allegations. (Record, p. 209). Therefore, although no evidentiary hearing was provided, Petitioner was not denied the opportunity to present evidence of these "newly available" studies, i.e., studies since this Court's decision in Witherspoon v. Illinois, supra, in support of his contentions. The United States Court of Appeals for the Fifth Circuit made reference to this action of the district court in footnote 2 of its opinion in Smith v. Balkcom, 660 F.2d 573, 575, n.2. The Court of Appeals found there to be no explanation why counsel for the Petitioner could not submit in documentary form any of the so-called "studies" or other empirical evidence in support of the "prosecution proneness" argument without the necessity of an evidentiary hearing. Additionally, the United States Court of Appeals for the Fifth Circuit noted that the Petitioner had not asserted that under 28 U.S.C. § 2254(d), he was entitled to an evidentiary hearing on any of his claims.

Petitioner now claims that the aforecited portion of Witherspoon v. Illinois, supra, dealing with this issue entitles him to an evidentiary hearing. However, Respondent respectfully asserts that the Court of Appeals for the Fifth Circuit correctly observed in footnote 10 of its opinion in Smith v. Balkcom, supra, that this Court's decision in Witherspoon v. Illinois, supra, ". . . can hardly be construed as a mandate that district

courts hold such a hearing when a hearing is not otherwise statutorily required." 660 F.2d 573, 578, n. 10. The court went on to note that two of the authors of certain studies submitted in support of this proposition had testified in person at Petitioner's state habeas corpus hearing.

Therefore, the decision of the United States Court of Appeals for the Fifth Circuit in Smith v. Balkcom, supra, is not in conflict with decisions of other state and federal courts as to Petitioner's right to attempt to prove as a factual matter that death qualified juries are biased on the question of guilt. Rather, Respondent submits that the United States Court of Appeals for the Fifth Circuit took the second step outlined by this Court in Witherspoon v. Illinois, supra, in determining whether Petitioner's constitutional rights had been violated by the exclusion of death qualified jurors during the guilt phase of his trial, a step which no other court had yet reached as the courts had either determined that the nature of the studies presented did not establish scientifically the prosecution proneness of such juries or, as in Grigsby v. Mabry, 637 F.2d 525 (8th Cir. 1980), cited by the Petitioner, that an opportunity had not been given to an individual to present evidence relative to the question of death qualification of jurors, when there were assertions that additional evidence was available. Of course, as just discussed, this was not the situation in the instant case, as Petitioner was allowed to present any and all evidence in documentary form and in the additional form of written briefs for the district court's consideration of this issue on the merits.

Instead of losing itself in the morass of the statistical evidence presented by the Petitioner, whose scientific methodology and results have been continually questioned by this Respondent

and numerous others, the United States Court of Appeals for the Fifth Circuit took a rational and reasonable approach to the question and assumed for the sake of argument that the studies of the Petitioner proved what they were purported to show, i.e., prosecution proneness and determined what, if any, violation of Petitioner's constitutional rights would have occurred.

Contrary to the assertion of the Petitioner that the United States Court of Appeals for the Fifth Circuit, made "complete nonsense" of Witherspoon's analysis of the controlling constitutional question (Brief for Petitioner, p. 39), Respondent submits that the court clearly proceeded on the second question envisioned by this Court in Witherspoon if prosecution proneness were established, i.e., the question of balancing the state's interest in submitting the penalty issue to a jury capable of imposing capital punishment at the expense of the defendant's interest in a completely fair determination of guilt or innocence. 1/

1/Respondent does not concede at this time, nor has he ever conceded that Petitioner's studies support as a "scientific matter" that death qualified jurors are prosecution prone. However, as these studies were assumed to be true for the sake of argument by the United States Court of Appeals for the Fifth Circuit and as Respondent contends that this issue was properly determined to be without merit, Respondent will refrain from pointing out the weaknesses in various of these studies such as have been pointed out in such cases as People v. Rhineheart, 107 Cal. Rptr. 34, 507 P.2d 642, 652-53 (1973) and Commonwealth v. Martin, 465 Pa. 134, 348 P.2d 391, 405 (1975); Commonwealth v. McAlister, 313 N.E.2d 113 (Mass. 1974); United States, Ex Rel. Clark v. Fike, 538 F.2d 750, 761-762 (7th Cir. 1976), cert. denied, 427 U.S. 1064 (1977).

Respondent contends that the United States Court of Appeals for the Fifth Circuit did follow the correct approach which this Court had outlined in Witherspoon, by assuming for the sake of argument that it had been scientifically proven that death qualified jurors were prosecution prone but then determining by means of a balancing test of the state's interest versus defendant's interest whether or not this indicated that any of Petitioner's constitutional rights with reference to his jury had been violated. One observation which the court made which should be brought to this Court's attention in determining whether or not a petition for certiorari should be granted is that contained in footnote 17 of the Court of Appeals' decision. The court stated, "a serious defect in Petitioner Smith's argument that his conviction must be reversed is his failure to bridge the gap of proof between the abstract proposition that death qualified jurors are conviction prone and the contention that the jury which convicted him was in fact less than neutral with respect to guilt." Respondent contends that this observation was significant and serves to provide this Court with ample reason for denying a petition for certiorari in a case in which Petitioner is seeking to obtain review of general propositions which he has not proven are specifically applicable to his own case or that even if accepted, would require the granting of federal habeas corpus relief to him.

However, Respondent contends that the United States Court of Appeals for the Fifth Circuit properly rejected the "general proposition" that death qualified jurors denied Petitioner his constitutional right to an impartial jury. The Court of Appeals for the Fifth Circuit noted that this same contention had been previously rejected by the United States Court of Appeals

for the Fifth Circuit in Spinkellink v. Wainwright, 578 F.2d 582 (5th Cir. 1978). The court quoted the rationale it had articulated in Spinkellink v. Wainwright, in the following language:

> "That a death-qualified jury is more likely to convict than a non-death-qualified jury does not demonstrate which jury is impartial. It indicates only that a death-qualified jury might favor the prosecution and that a non-death-qualified jury might favor the defendant."

Id. at 594.

The United States Court of Appeals for the Fifth Circuit reaffirmed the rationale of Spinkellink v. Wainwright, supra, but went further and noted that essentially what Petitioner was seeking was not an impartial jury, by his definition, but rather a jury composed of persons who are in effect "defendant prone." Smith v. Balkcom, 660 F.2d 573, 579 (5th Cir. 1981). In utilizing the balancing test noted above, the court found that under numerous decisions it had been held that the state, as well as the accused, enjoyed a right to an impartial jury. Id. at 579. The court rationally observed that:

> "The guarantee of impartiality cannot mean that the state has a right to present its case to the jury most likely to return a verdict of guilt, nor can it mean that the accused has a right to present its case to the jury most likely to acquit. But the

> converse is also true. The guarantee cannot mean that the state must present its case to the jury least likely to convict or impose the death penalty, nor that the defense must present its case to the jury less likely to find him innocent or vote for life imprisonment."

Id. at 579.

In essence, the court balanced the rights of the state and the rights of the defendant under the principles set forth in Witherspoon and found that though there were strong compelling interests on both sides, that the danger of a"defendant-prone jury" was equally great and was legitimately protected by means of the exclusion of jurors with unequivocal opposition to the death penalty. 2/

Respondent contends that this issue was properly dealt with by the United States Court of Appeals for the Fifth Circuit under the authority of this Court in Witherspoon v. Illinois, supra, and that the court dealt with the essential question that death qualification of juries necessarily prohibits a defendant

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2/It should be noted that the United States Court of Appeals examined Petitioner's suggestion that a more "impartial" jury could be obtained by a bifurcated trial where one jury presided over the guilt-innocence phase and a second jury presided over the penalty phase. The court noted various detriments which might accrue to the defendants with the adoption of such a system by destroying those jurors who might have a "whimsical doubt" as to a petitioner's guilt from serving at the penalty phase during which they might oppose the imposition of the death penalty. Smith v. Balkcom, at 580.

from receiving an impartial jury, so as to violate his constitutional rights, when balanced against the state's parallel right to an impartial jury.

II. THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT CORRECTLY REJECTED PETITIONER'S CONTENTION CONCERNING THE ALLEGED ARBITRARY AND CAPRICIOUS IMPOSITION OF THE DEATH PENALTY IN THE ABSENCE OF PROOF BY THE PETITIONER OF INTENTIONAL DISCRIMINATION AGAINST HIM IN HIS CASE.

Petitioner presented certain documentary evidence to the district court in support of his application for federal habeas corpus relief which he alleged supported his contention that his death sentence was imposed pursuant to a pattern and practice of wholly arbitrary and capricious infliction of the death penalty in Georgia in violation of the Eighth and Fourteenth Amendments. The documentary evidence which was presented by the Petitioner consisted of the following:

(a) an affidavit of William J. Bowers;

(b) an affidavit of Glenn L. Pierce;

(c) the affidavit of the Petitioner;

(d) the affidavit of the Petitioner's wife;

(e) various portions of the record of an evidentiary hearing in the federal habeas corpus actions of Jack Carlton House v. Balkcom, Case No. C78-1471A (N.D. Ga.) and Timothy Wesley McCorquodale v. Balkcom, Case No. C79-95A (N.D. Ga.) and an

evidentiary hearing on a motion concerning the death qualification of jurors in People v. Kenneth Lynn Moore. (R. 52-53).

The district court did consider this evidence in determining the merits of Petitioner's claims relating to arbitrariness and capriciousness. The Court also considered a document produced by the Respondent in response to these exhibits which were attached to Petitioner's motion for an evidentiary hearing in the district court. This was a copy of the order of the United States Magistrate who evaluated the documentary evidence presented in the cases of House v. Balkcom, supra, and McCorquodale v. Balkcom. The Magistrate noted that the evidence presented in these cases on behalf of those petitioners was allegedly concerning a similar issue of "arbitrariness" in the imposition of the death penalty. However, the United States Magistrate characterized the evidence which was also offered in this case in the following manner:

> "Because empirical evidence offered neither addresses itself to the arbitrariness or lack of arbitrariness of the sentencing authority, nor shows that upon the facts of this case the imposition of the death penalty is unwarranted, the evidence is considered irrelevant and shall be excluded from further consideration by the Magistrate."

(R. 196).

Further, the United States Magistrate in those two federal habeas corpus cases in which documentary evidence was submitted in this case, noted that this was the same type of evidence presented to the United States Court of Appeals in Spinkellink v. Wainwright, 578 F.2d 582, 613-14 (5th Cir. 1978). The United States Court of Appeals for the Fifth Circuit in Smith v. Balkcom, supra, reiterated the requirement of Spinkellink that a petitioner, to show that he is entitled to relief in a petition for a writ of habeas corpus, must show "some specific act or acts evidencing intentional or purposeful . . . discrimination against [the petitioner]." Smith v. Balkcom at 585, quoting Spinkelling v. Wainwright, 578 F.2d at 614, n.40.

Under this standard, the United States Court of Appeals for the Fifth Circuit found Petitioner's claims to constitute "mere conclusory allegations" of discrimination and found these claims to lack proof of intentional discrimination against him in this case.

Contrary to the Petitioner's contentions, to require Petitioner to prove his allegations alleged in an application for federal habeas corpus relief, does not constitute new law in the area of federal habeas corpus. Petitioner was allowed to present any documentary evidence in the form of depositions, affidavits, studies, testimony in other cases or any other form which such evidence might take, within a thirty day period from the denial of Petitioner's motion for an evidentiary hearing. Petitioner was offered a chance to show intentional discrimination as applicable to him and failed to do so. The evidence offered by the Petitioner simply did not support the conclusions which Petitioner wanted the court to draw.

Petitioner also made an attack on equal protection grounds as to the application of Georgia's death penalty. Again, the Court of Appeals, reviewing the evidence offered in support of Petitioner's contention found that this evidence did not establish an equal protection violation.

The Court of Appeals noted that in some cases, circumstantial or statistical evidence of racially disproportionate impact may be so strong as to compel the inference that there is racially discriminatory intent or purpose. However, in this case, the Court of Appeals correctly characterized the evidence produced in the data offered by the Petitioner as relating only to capital cases actually presented for trial in the state as opposed to examining other cases, for example, those cases in which the death penalty arguably could have been sought, but was not, etc.

Contrary to Petitioner's assertion, no rejection was made on the basis of Petitioner's pleading alone, but rather, Petitioner's evidence was simply too conclusory and could not be taken for the proposition for which it was offered. This did not, as asserted by Petitioner, require Petitioner to account for rebuttal evidence which might be offered by the Respondent, but rather simply required Petitioner to make out his case. Simply stated, the court found the same problems with the data as had the United States Magistrate who presided over the hearings in which the data was presented. The Court of Appeals correctly found the following, "the statistics are not inconsistent with the proper application of the structured capital punishment of the state found constitutional in Gregg v. Georgia, 428 U.S. 153 [96 S.Ct. 2909, 49 L.Ed.2d 859] (1976).

Petitioner was given a full and fair hearing on these claims and there was no violation of Townsend v. Sain, 372 U.S. 293, 318 (1963), or similar cases. No evidentiary hearing was mandated by the presentation of this evidence and as it did not support Petitioner's claims under the applicable standards, the Court of Appeals properly found this evidence to be without merit.

III. THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT PROPERLY DETERMINED THAT THE SUPREME COURT OF GEORGIA HAD PROPERLY FOLLOWED THE STATUTORILY MANDATED SENTENCE REVIEW PROCEDURES APPROVED AS CONSTITUTIONAL ON THEIR FACE BY THIS COURT IN GREGG v. GEORGIA, 428 U.S. 153 (1976).

Petitioner contended that the methods and procedures which the Supreme Court of Georgia utilizes in conducting its statutorily mandated review of death sentences under Ga. Code Ann. § 27-2537(c) were inadequate to meet the minimum requirements of the Eighth Amendment.

The United States Court of Appeals for the Fifth Circuit noted that three determinations must be made by the Supreme Court of Georgia under this statutorily mandated procedure. Smith v. Balkcom, 660 F.2d 573, 585 (5th Cir. 1981). The court also noted that this statutory scheme had been held to be constitutional on its face by this Court in Gregg v. Georgia, 428 U.S. 153 (1976). Respondent agrees with Petitioner that this did not foreclose capital defendants from demonstrating

that "in fact" the appellate review system was not functioning properly, but rather, Respondent asserts that Petitioner failed to meet his burden of showing that it did not properly function in this case, as the court in Godfrey v. Georgia, 445 U.S. 420, 429 (1980), faulted the sentence review with reference to the support in that case for a particular aggravating circumstance.

Petitioner alleges that he provided the district court with the deposition testimony of an officer of the Supreme Court of Georgia who was involved in developing the court's sentence review methods and procedures. However, this still does not cure the deficit noted by the Court of Appeals when it found that Petitioner had not even attempted to establish that the Supreme Court of Georgia failed to properly follow its statutory mandate in this case. Again, Petitioner is asserting general propositions, unrelated to the facts and circumstances of this particular case, thereby inviting rejection of these contentions by the United States Court of Appeals.

Petitioner contends that the thrust of his claim is that the Supreme Court of Georgia's sentence review method "always" allows it to find an "apparently plausible reason" for affirming a death sentence, regardless of whether or not that reason is one which the court itself applies with any generality or consistency. However, again, as noted by the Court of Appeals, the Petitioner made no showing of any reason why the sentence review in his case, was based on a implausible reason or one which the court applied inconsistently in other cases. These generalized allegations of alleged constitutional defectiveness with no reference to specific cases, including the Petitioner's, was properly rejected by the United States Court of Appeals for the Fifth Circuit in light of the fact that the statutory scheme

has already been approved and Petitioner has not shown that it went awry in his case.

CONCLUSION

For all of the above and foregoing reasons, this petition for a writ of certiorari should be denied.

Respectfully submitted,

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